IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 548 of 2003

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.R.DAVE
HON'BLE MR. JUSTICE MD SHAH

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Petitioner(s)

Versus

BHARATBHAI BHUPATBHAI VALA - Respondent(s)

==========

Appearance :

Mr.Sudhanshu Patel; A.P.P.for Petitioner No(s).: 1.
None for Respondent No(s).: 1.

==========

CORAM :THE HON'BLE MR.JUSTICE A.R.DAVE

AND

THE HON'BLE MR. JUSTICE MD SHAH

Date : 23/06/2005

ORAL JUDGMENT

(Per : THE HON'BLE MR.JUSTICE A.R.DAVE)

.

1. In this appeal, judgment and order dated 1st February 2003 passed in Sessions Case no.93 of 2002 by the Fast Track Court, Amreli, has been challenged. The accused had been charged under the provisions of Sections. 302, 307, 363, 354, 376, 341 read with Section 114 of the Indian Penal Code.
2. We have heard learned A.P.P. Shri Sudhanshu Patel and have also perused the copies of evidence which had been adduced before the trial Court.
3. The case of the prosecution is that the accused had raped Bhavnaben and , thereafter, so as to see that she does not reveal the said fact to anybody , with the help of juvenile offender Shri Kiran Manabhai Patgir ,had murdered Bhavnaben by setting her ablaze. It has been alleged that on 5th June, 2002 ,when deceased Bhavnaben was passing through a place near Lohana Mahajanwadi, she was stopped by the accused as well as Kiranbhai and she was dragged to a corner of that lane where she was raped and when deceased Bhavna had threatened them that she would inform everybody about the same, the accused had set her ablaze.
4. We have heard the learned A.P.P and have gone through the evidence and upon hearing the learned A.P.P. , we do not find any substance in the appeal for the reason that the experts of Forensic Science Laboratory did not find the scene of offence to be correct as alleged because no evidence of whatsoever type could be found by them at the place where the deceased was alleged to have been burnt alive. On the other hand, the evidence is to the effect that Bhavna was in her room when her body was burnt. The curtains in the room had been badly affected because of the heat generated by burning of the body. Not only kerosene, but a container of kerosene was also found in the room where possibly she was burnt. It was also recorded that plenty of carbon particulars were found in her room. Thus, the scene of offence as alleged by the prosecution is definitely not the place where deceased Bhavna had suffered burn injuries, which ultimately resulted into her death.
5. After the incident, deceased Bhavnaben was taken to the Community Health Center, Jasdan, where she was examined by Dr. Narendra Hariram Varma , Medical Officer P.W.no.13, It has been deposed by the said witness that the deceased had suffered 90% burn injuries and he had given a certificate of injury. The deceased had given history to the effect that she was burnt but she did not tell that she was set ablaze by the accused or someone else, and, at that time ,she was quite conscious, but subsequently her condition worsened and, at the time, when the Mamlatdar, Jasdan, Executive Magistrate was called for recording Dying Declaration , the

deceased had become disoriented and, therefore, the Executive Magistrate could not record the Dying Declaration. This witness has also deposed that the deceased was not in a fit state of mind or was not well oriented so as to enable the Mamlatdar, Jasdan, to record the Dying Declaration though the Mamlatdar, Jasdan, Executive Magistrate was called for recording the Dying Declaration, and therefore, the Dying Declaration of the deceased was not recorded. Since the deceased was very serious at the relevant time , she had been sent to Rajkot by an ambulance van. Thus, the deceased was in a disoriented state of mind, and, therefore, her Dying Declaration was not recorded around 4.00 p.m. on 6th June, 2002.

6. Thereafter, the deceased was taken to Rajkot where her Dying Declaration was recorded. In the Dying Declaration it was recorded that she was set ablaze by the accused.
7. The said Dying Declaration has not been believed for the reason that at an earlier point of time she was found to be disoriented and upon appreciation of evidence, we also feel that the appreciation of evidence by the trial Court is proper as the deceased could not have recovered looking to the injuries sustained by her. For the said reason the trial Court did not give any importance to the Dying Declaration which was recorded subsequently at Rajkot. Moreover, the deceased did not tell anything to the doctor who had treated her at Jasdan even when, initially, she was quite oriented, when she personally gave case history to Doctor Varma, P.W. No. 13.
8. It is also pertinent to note that from the postmortem notes, no indication with regard to sexual intercourse having taken place could be revealed. This denotes that there was no sexual intercourse, much less, rape and, therefore, the story with regard to rape having been committed cannot be believed.
9. On perusal of the evidence, it appears that the story put forward by the prosecution is not probable for two very important reasons, (i) that there was no indication with regard to sexual intercourse having taken place upon perusal of the postmortem report and (ii) there was no indication with regard to existence of kerosene or any sign of burns as alleged at the place where the alleged offence had been committed. On the contrary , there appears to be substantial evidence to the effect that the deceased either had burnt herself or that she was burnt at her residence in her room. This fact shatters the case of the prosecution that she was set ablaze at a different place.
10. Looking to the aforesaid factors, we do not think it proper to

(A.R.Dave,J.)

(M.D.Shah,J.)

ard-lee